

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Leonard Evans, :
: :
Petitioner(s), : Case Number: 1:09cv819
vs. : :
: Chief Judge Susan J. Dlott
Warden, Lebanon Correctional Institution, :
: :
Respondent(s). : :
:

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on January 25, 2011 a Report and Recommendation (Doc. 21). Subsequently, the petitioner filed objections to such Report and Recommendation.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Accordingly, petitioner's motion for an evidentiary hearing (Doc. 17) is **DENIED**.

Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 3) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to the claims alleged in Grounds Four and Five of the petition, which this Court has concluded were procedurally defaulted and thus barred from review on procedural grounds, because under the applicable two-part standard

enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), “jurists of reason” will not find it debatable whether the Court is correct in its procedural ruling or whether petitioner has stated a viable constitutional claim in those grounds for relief. A certificate of appealability will not issue with respect to the non-defaulted claims alleged in Grounds One through Three of the petition in the absence of a substantial showing that petitioner has stated a “viable claim of the denial of a constitutional right” or that the issues presented are “adequate to deserve encouragement to proceed further.” *See Slack*, 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order adopting the Report and Recommendation will not be taken in “good faith,” and, therefore, will **DENY** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 23(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court